

HEIRS OF DON CARLOS DE VILLEMONT.

[To accompany bill H. R. No. 93.]

MARCH 5, 1840.

Mr. R. GARLAND, from the Committee on Private Land Claims, made the following

REPORT:

*The Committee on Private Land Claims, to whom were referred the petition and documents in relation to the claim of the heirs and legal representatives of Don Carlos de Villemont, having had the same under consideration, report :*

That this claim has for several years been before Congress, and heretofore received the favorable consideration of this committee. At the last session of Congress the claim was examined, and an elaborate report made in favor of it. The committee have re-examined the case, and, finding it very fully stated in the report made in February, 1839, adopt it as expressing the views of the committee, and ask to report a bill in conformity with the conclusions to which they have come.

FEBRUARY 6, 1839.

*The Committee on Private Land Claims, to whom were referred the petition and papers in relation to the claim of the heirs of Carlos de Villemont, having had the same under consideration, beg leave to report :*

That it appears from these documents that, on the 17th of June, 1795, the Baron de Carondelet, then Governor General of Louisiana, granted to Don Carlos de Villemont, then the Spanish commandant at the post of Arkansas, a tract of two square leagues at Point Chicot, upon the usual conditions of making a road and a permanent settlement within a limited time. From the testimony it clearly appears that, at the time of making this grant, and up to some time in 1802, De Villemont was the commandant and only officer at the post of Arkansas, which, during the whole time, was in a state of great jeopardy from the surrounding hostile Indians; and that his absence from the official duties thus imposed upon him would not have been permitted by the Governor General, never having, during the whole of that time, been enabled even to go to New Orleans: that, under these circumstances, it was utterly impossible for him to have made a personal settlement upon the land thus granted to him; but that, from the

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time of obtaining his grant, he was unceasing in his endeavors to procure persons to go upon the tract. The evidence conclusively establishes the fact, that, from the date of the grant until subsequent to the cession of the country to the United States, the hostile attitude of the Indians prevented any settlements from being made on the west bank of the Mississippi, between the mouths of the St. Francis and Yazoo rivers, about midway between which points the land in question is situate; and the only person who, during that period, resided between those points was a Frenchman, who had been placed by De Villemont upon the land in question, and whose safety was entirely owing to his having an Indian wife; but that, from about 1807 up to the present time, (with the exception of a short interval immediately succeeding the death of one of his agents,) the land has been in the constant use and possession of De Villemont, or his family, who have resided thereon for the last sixteen years—he having spent a considerable part of 1809 upon the tract.

This claim (and the genuineness of the grant has never been questioned, so far as your committee are informed) was presented to, and spread with evidence in its support upon the reports of, the recorder of land titles in 1813, and was reported upon by him as being "a special location," but "not confirmed—conditions not complied with;" he giving, however, at the same time, the reasons which prevented such confirmation, by stating that "danger from Indians prevented settlement." The conditions referred to were those common to all grants; and the testimony before the committee is conclusive in showing that they were, in fact, mere matters of form, and that a compliance with them was never considered by the Spanish authorities as indispensable to save the grant from forfeiture. In this case, too, it seems impossible to suppose that a compliance with them was ever contemplated, or would have been required, by the former governor of the country. It has been seen that the official situation of the grantee was such, from the time of making the grant up to almost the period at which the country was transferred, as effectually to preclude his making the settlement, if the disposition of the Indians (who had, until even after the change of Government, prevented all settlements from being made for full one hundred and fifty miles on each side of it) would have admitted of his doing so. The other requirement (that of making a road) it was equally impracticable for him to accomplish. The land was at least one hundred miles from any white settlement, and the road would have had to be opened through a tract of country then held by hostile Indians, which to this day is almost impassable, without any such way of facilitating intercourse, and within which not a single settlement was to be found; and the road, under these circumstances, even if made, could never have been used, and would, therefore, have been entirely useless. The facts were as well known to the Governor General at the time he made the grant as they now are; and having promoted De Villemont on account of his long and faithful services, upon his being relieved from the command of the post in 1802, the committee cannot suppose that, by inserting those usual terms in the grant, he ever expected a compliance with them, or would have enforced their fulfilment; and yet, for a non-compliance with them, or, in other words, in consequence of his being prevented from doing so by the very orders of the granting officer, who required his constant presence on public duties at another place, as well as by other circumstances, over which it was utterly impossible for him to exercise

any control whatever, and for the consequence of which he therefore should not be held responsible, his claim appears upon the recorder's reports as unconfirmed.

The committee will here remark, however, that ever since the passage of the act of April, 1814, the United States have, by their uniform legislation, recognised such grants as the one in question as conveying a valid title, without requiring, in any case, proof of the fulfilment of their conditions, even in cases in which a compliance could have been expected; and a reference to the reports of all the different commissions which have been created ever since that time for investigating land claims in the former province of Louisiana will show that hundreds of cases, and many of them for much larger areas than the one now under consideration, have been confirmed by Congress, with a full knowledge of the fact that a compliance with the conditions which appear to have been imposed by the grants had not been attempted to be established.

The act of 1814, to which the committee have referred, confirmed all claims in the Territory of Missouri which had been presented for investigation prior to its date, if under titles obtained prior to the 10th of March, 1804, when the same had been either surveyed or located prior to that time, or contained a *special location*. The certified copy from the records of the recorder shows that the claim did appear thereon in 1813, and that it was a "special location;" and, as that act did not require or authorize any investigation as to conditions which might have been imposed, or their fulfilment, the committee do not perceive the reason why it was not reported as confirmed under that law, to the extent of a league square; its merits being, in all respects, fully equal to those of other claims, for even larger quantities, which were confirmed under that act to that extent. The claimant pressing his case before Congress, special provision was made by the 5th section of the act of July, 1832, for its investigation by the board of commissioners appointed by that act to examine the claims in Missouri; and those commissioners, upon a full investigation of the subject, unanimously recommended its confirmation.

This claim having been duly filed with the recorder, the land embraced in its limits was, by the acts of 1811 and 1818, expressly declared to be exempted from sale until Congress should have finally acted thereon; but, while the claimant was prosecuting his claim before Congress, the whole of it was surveyed, and represented upon the official plats as public lands. By the papers before the committee, it appears that in 1826 the agent of the claimant notified the register of the proper district of the claim; and, in June of that year, the Commissioner of the General Land Office directed that officer, upon the establishment of the situation of the claim, to reserve the lands. In 1830, however, when the lands in the neighborhood were proclaimed for sale, notwithstanding these orders, and a positive protest from the agent of the heirs, claiming the benefit of the laws of 1811 and 1818, the whole of the claim, with the exception of the part mentioned in the certificate of the register at Helena, of the 22d October, 1836, (being about one-third of the claim,) was offered for sale. This sale was clearly illegal, and the claimants could have required the cancelling of the entries made by the purchasers; but not being desirous of injuring those who, relying upon the supposed correctness of the acts of the officers of the Government, made those purchases, and have since greatly improved the land, the claimants now only ask the privilege of locating

the like quantity out of the public lands in the State; and among the papers there is a petition, very numerously signed by those purchasers and the adjoining settlers, urging the final settlement of the claim in the manner desired by the claimants. This request, considering that the lands of which the claimants have thus been deprived by the erroneous acts of the Government officers are, intrinsically, of the very first quality of river-lands, and that all of that description have been already disposed of by the Government, the committee deem but just and reasonable.

The only objections against the recognition of this claim, that the committee are aware of, have been made by two individuals, named Miles and Walworth, now residing upon the reserved portions of the claim, and who, in their remonstrance, state that, "believing that the title to this land had passed to the United States, and finding it unoccupied, and, as far as they had an opportunity of knowing, unclaimed," they had settled thereon. These statements do not appear warranted by any of the testimony produced, even by the remonstrants themselves. The testimony, generally, shows that, as far back as 1803, De Villemont had a tenant on the land; and that, from about 1807, it has been constantly settled upon by different persons, all with a full knowledge of the existence of the claim, and some of them as the acknowledged tenants of the grantee; and, since 1822, it has been constantly inhabited by himself and family. Miles, it appears, was originally engaged in rafting, and it was not until 1826 or 1827 he bought his first negroes; and Walworth first went on the land in 1828; and since that time they have, for small sums, purchased some of the improvements made by those settlers. In the very first purchase made by Walworth, in 1828, (and the only one of which there is any record evidence,) his grantor expressly states that he does not warrant either against the United States, or the "claim of the heirs of De Villemont;" and it is in proof that some of the other purchases were made from persons whose sole inducements in making such sales were to avoid a conflict with the De Villemont title. The assertion that the claim was *unoccupied* when either of those persons went there, is, in fact, contradicted by the whole of the testimony; and as to the allegation that, as far as they had an opportunity of knowing, it was unclaimed, the committee are constrained to say that that also is not warranted by the testimony, which conclusively establishes the fact of the general notoriety of the existence and locality of the claim, even from the time it was first granted. Walworth's first purchase was made with an express refusal to warrant against the claim; the other settlers sold out in consequence of it. The lands were actually withheld from sale in 1830 on account of the claim; and Miles, in person, opposed the recognition of it before the Missouri commissioners, under the act of 1832; and yet, in consequence of their having continued to hold on to the possession of land thus well known and recognised to be the property of others, then and now residents on the tract, they now seek to set up such tortuous possession as an argument against the recognition of the claim. This course your committee do not feel called upon to sanction; and particularly so when we consider that even if the testimony, instead of contradicting, had corroborated those assertions, it would still be insufficient, in the opinion of the committee, to justify their depriving the family of the claimant of any portion of the only land which appears ever to have been claimed by, or granted to, De Villemont, and which has been, by express legislation, reserved from all disposition whatever since as far back

as 1813, with the view of preventing any such third parties as Messrs. Miles and Walworth from becoming involved by the settlement of the questions which properly affected only the United States and the claimants. Fully impressed with a belief that the claim of the heirs of De Villmont is legal and just, such as Congress has always heretofore recognised, and that they are entitled to the relief desired, the committee beg leave to report a bill conforming to these views.



